



*Ginger*  
Attorney General  
STATE CAPITOL  
Phoenix, Arizona 85007

Robert E. Corbin

January 19, 1981

**LAW LIBRARY**  
**ARIZONA ATTORNEY GENERAL**

Mr. Jon W. Thompson  
Deputy County Attorney  
Office of the County Attorney  
Post Office Box 1048  
Yuma, Arizona 85364

Re: I81-026 (R80-274)

Dear Mr. Thompson:

Pursuant to A.R.S. § 15-122.B, we decline to review your opinion dated December 11, 1980, to the Assistant Superintendent of Parker School District No. 27, concerning the tenure status of certain district teachers.

Sincerely,

*Bob Corbin*

BOB CORBIN  
Attorney General

BC:MAP:eb

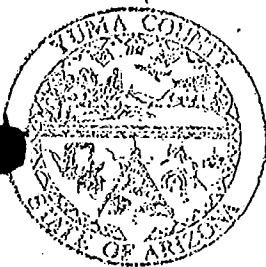
Michael Irwin  
County Attorney

## OFFICE OF THE COUNTY ATTORNEY

168 S. Second Avenue  
Post Office Box 1048  
Yuma, Arizona 85364

782-4534, Ext. 55  
782-2776

David S. Ellsworth  
Chief Deputy



December 11, 1980

Rudy Gonzalez  
Assistant Superintendent  
Parker School District No. 27  
Parker, AZ 85344

Dear Mr. Gonzalez:

In response to your October 16, 1980 request for opinion, a copy of which is attached, I submit the following:

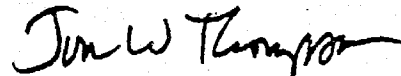
1. It is my opinion that both teachers would retain their previously established tenure in the situations described. The situations fit both the letter and the spirit of A.R.S. §15-261. Further, since the U. S. Supreme Court has emphasized that tenure is a property right with appropriate due process protection, the statute cannot be construed to give the Board authority to deny the recognition of established tenure. And finally, although both these teachers technically resigned one position to take another, they did so, apparently on the advice of school officials, and no reasonable distinction between the described situation and the "transfer" mentioned in §15-261 can be drawn. And Opinion of the Attorney General No. 78-153 indicates that due process requires that a tenured teacher be informed of the consequences of a change in position which could jeopardize his continuing status. I believe that there are no alternatives to preservation of tenure under the circumstances described.

2. Notwithstanding that these teachers may have retained tenure, I do not believe that the limitation on salary reduction for continuing teachers imposed by A.R.S. §15-257 would prevent the School Board from exercising its §15-443A authority to fix salaries by paying these employees salaries appropriate to their new position, as in the described situation. These new positions were accepted voluntarily, with full knowledge of the salary that would go along with the position.

Rudy G. Gonzalez  
Parker School District No. 27  
December 11, 1980  
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3. A.R.S. §15-443A gives the Board authority to fix salaries<sup>m</sup> for school teachers and employees, limited by the proviso that the Board in exercising this authority may not act in an arbitrary and capricious manner. The §15-257 limitation on salary reduction should not apply to the described situation where a new position with lower but appropriate salary is willingly accepted; this is not the type of unilateral "salary reduction" envisioned by the statute. And any right under §15-257 can be waived or bargained away, both of which occurred here. Thus there is no entitlement to back pay.

Sincerely,



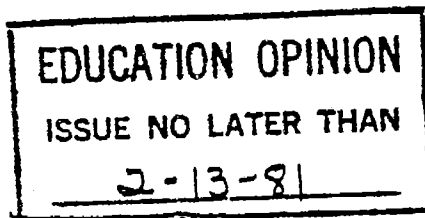
Jon W. Thompson  
Deputy County Attorney

JWT/max  
enclosure

PARKER SCHOOL DISTRICT NO. 27

P. O. Box 1089  
PARKER, ARIZONA 85344  
(602) 669-2131

October 16, 1980



12-17-80 pc  
POLLARD  
R80-274

Mr. John Thompson  
Deputy County Attorney  
Yuma County Attorney's Office  
P.O. Box 1048  
Yuma, Arizona

Dear Mr. Thompson:

The Board of Education, at its meeting of October 15, requested that opinions be pursued on the following:

On July 13, 1978, Northern Yuma County Union High School District No. 60 was dissolved and became a high school district. At that point in time, Parker (Elementary) School District No. 27 and Parker High School District No. 60 came to have coterminous boundaries and were served by a common board of trustees. These districts had two superintendents until unification on July 9, 1980.

During the period before unification (late July, 1978), an elementary teacher became aware of and interested in a high school position that he was qualified to fill. The teacher asked to be released from his contract to take the high school job. He was advised to resign from the elementary district so that he could apply for the high school position.

One year later, in a similar situation, a high school teacher who was experiencing difficulties at the high school became aware of a position at the elementary level for which he was qualified and made application for the position. This teacher had signed a contract with the high school district and was advised to get released from his contract with the high school so that he could be offered a contract with the elementary district. In this particular situation, the elementary administrator was aware of the teacher's difficulties at the high school and felt that, upon the advice of high school officials, perhaps a change in grade level would be beneficial to the teacher. Because the teacher had tenure, a request for transfer would not have been considered by the elementary district.

Administrations of both districts and the teachers involved were not aware of the intent of ARS 15-261 - Preservation of Tenure. In each case, the teachers in question resigned previously held positions. There was no suggestion of transfer made by any party involved.

Mr. John Thompson  
October 16, 1980  
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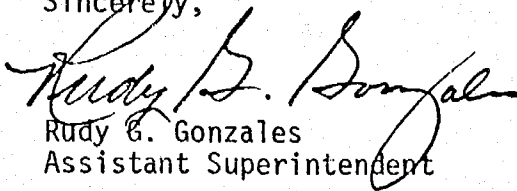
As ARS 15-261 is written, it is implied that the Board has two alternatives:

1. To recognize previously established tenure.
2. Not to recognize previously established tenure.

Questions:

1. What application does ARS 15-261 have to the situation described and are there alternatives to preservation of tenure under these circumstances?
2. If tenure is preserved, what application does ARS 15-443.A have in a case where a district rehires a former employee (these two teachers did resign) at the salary it deems appropriate irrespective of the position on the salary schedule formerly held by the individuals in question?
3. The teachers in question were placed on steps on the salary schedule commensurate to their work experience and training as allowed by policy in the hiring of teachers. If they were not placed on a step equivalent to the step they were on in their former district, and if opinion on Question No. 1 favors them, are they entitled to any back pay?

Sincerely,

  
Rudy G. Gonzales  
Assistant Superintendent

RGG/nk